

Memorandum of Understanding

Visa International Service Association, a Delaware corporation having its principal place of business at 900 Metro Center Boulevard, Foster City, California 94114 ("Visa") and MasterCard International, Incorporated, a Delaware corporation having its principal place of business at 2000 Purchase Street, Purchase, New York, 10577-25099 ("MasterCard") (collectively, the "Associations") hereby agree to this Memorandum of Understanding ("MOU") regarding the development of a joint standard for secure electronic commerce for bankcard transactions over the Internet on this ____ day of January 1996 ("Effective Date")

1. Development of a Joint Industry Standard for Electronic Commerce. In recognition of the substantial progress that has been made to date toward agreement on a joint, open, industry standard for electronic commerce using bankcards over the Internet and other public networks (the "Joint Standard"), the Associations agree to immediately cease all testing and implementation efforts on their individual standards, Secure Transaction Technology ("STT") and Secure Electronic Payment Protocol ("SEPP"). Furthermore, the Associations agree that they will not assist any third party in such testing and/or implementation. In the event that the Joint Standard is not published on the Internet on or before February 15, 1996, the restrictions set forth in this Section 1 shall terminate. Notwithstanding the foregoing, the restrictions of this Section 1 shall remain in effect up to February 29, 1996, so long as the parties are continuing to work diligently toward publication of the Joint Standard; however, in the event that either party is not acting in good faith, the other party's obligations under this Section shall immediately terminate upon notice to the other party.

2. Development of Joint Standard. The Associations agree to devote all necessary efforts and resources toward the development of the Joint Standard and toward the publication of the first draft of such standard by February 15, 1996. Furthermore, the Associations agree to use all necessary efforts and resources to incorporate all relevant comments in the Joint Standard by April 15, 1996.

3. Ownership of Joint Standard. The Joint Standard will initially be owned and administered jointly by the Associations, but will be submitted to the International Standard Organization ("ISO") for its ownership and maintenance. The Associations agree that the Joint Standard will not be submitted to ISO before one (1) year after the Joint Standard has been commercially implemented, however, nothing in this Section 3 shall restrict any informal review of the Joint Standard by ISO or submission of the joint Standard to ISO at an earlier date by mutual agreement of the Associations. The Associations further agree that ownership of the Joint Standard will not be transferred until after the standard is stable and after the publication of source code and object code sufficient to demonstrate the Joint Standard and test other implementations of the Joint Standard ("Reference Code"). The Associations shall jointly retain an independent third party software vendor to develop the Reference Code by March 1, 1996. The Associations shall split the cost for the development of Reference Code and shall require the developing party to complete the Reference Code as soon as practicable after the finalization of the Joint Standard. The Reference Code shall be jointly owned by the Associations.

4. Required Intellectual Property. The Associations agree to use good faith efforts to ensure that the implementation or use of the Joint Standard does not require a license from any party to any intellectual property ("Required Intellectual Property"), except as provided herein. It is understood that the Joint Standard will incorporate public key cryptography, which may require developers and/or software vendors to obtain a license. It is also understood that there may exist Required Intellectual Property unknown to the Associations that is required to use the Joint Standard. The Associations shall work together in good faith to identify Required Intellectual Property and in the event such intellectual property is identified, to obtain the necessary rights to use the Required Intellectual Property in the Joint Standard. The Associations agree to get their technology partners to transfer ownership of any Required Intellectual Property to the Associations; in the event that it is impractical to transfer such ownership, then the Associations shall obtain a worldwide, perpetual, irrevocable, royalty free license, with the right to sublicense, to use, make, sell, copy, and display the Required Intellectual Property as necessary in the Joint Standard. Specifically,

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EXHIBIT
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TO 919142494261

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Visa MasterCard
Memorandum of Understanding

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Visa's technology partners are Microsoft and SAIC and MasterCard's technology partners are Netscape, IBM and GTE.

5. Availability of Joint Standard. The Associations shall make the Joint Standard available to all third parties to make, use and sell products compliant with the Joint Standard on a royalty free basis. The Associations agree that neither of their respective Members shall be required to utilize or license any specific implementation of the Joint Standard.

6. Testing. The Associations agree that they will work together to test the Joint Standard. Such work shall include independent testing procedures where the results of such tests are shared with the other party. All such tests shall, to the extent practical, incorporate the use of both parties' card products. The Associations agree to use good faith efforts to conduct a sufficient number of such tests before the Joint Standard is finalized. Such testing shall begin as soon as practicable following the publication of the first draft of the Joint Standard.

7. Public Announcements. The parties shall agree on the contents of all news releases, press responses, question and answer scripts and other public statements relating to the Joint Standard, SEPP, or STT that describe or characterize incidents that occurred prior to the present effort to develop the Joint Standard or either party's role or responsibilities in any of the aforementioned standards ("Related Communications"). Neither party's communications with its respective Members or employees shall be considered Related Communications. Neither party may issue or participate, directly or indirectly, in any Related Communication without the prior written consent of the other party, however, such consent may not be unreasonably withheld. Notwithstanding the foregoing, either of the parties may at any time make announcements that are required by applicable law or regulatory bodies, so long as the party so required to make the announcement, promptly upon learning of such requirement, notifies the other party of such requirement and discusses with the other party in good faith the exact wording of any such announcement. Furthermore, both parties agree that each party shall credit the other for jointly developing the Joint Standard. Both parties shall use all commercially reasonable efforts to avoid making any type of announcement that misleads the public. Each of the parties understands and acknowledges, however, that the other cannot guarantee the content of press coverage with respect to the subject matter covered by this agreement, but each party undertakes in good faith to avoid attempting to gain more credit than the other for the development of the Joint Standard. The obligations of this Section 7 with respect to review of press communications shall expire sixty (60) days after final publication of the Joint Standard; all other obligations imposed under this Section 7 shall remain in effect during the term of this Agreement. In the event of a breach of this Section 7 by either party, the other party shall immediately be relieved of all obligations and provisions under this provision.

8. Term. If the Association's are unable to finalize the Joint Standard by April 15, 1996, then their respective obligations under this MOU shall terminate. If a Joint Standard is agreed upon, then the parties obligations shall continue until the ownership of the Joint Standard is transferred to ISO.

9. Termination for Cause. If a party violates any of the above obligations, then the other party shall have the right to terminate this MOU for cause. If the violation is one that can be cured, then the nonbreaching party must provide fourteen (14) days written notice to the breaching party before it can terminate this MOU.

10. Governing Law. This Agreement shall be governed by and construed in accordance with, the substantive law of the State of Delaware and of the United States of America, as applicable in all respects, including matters of construction, enforcement and performance, without giving effect to the principles of choice of laws thereof. Any suit arising out of or related to this Agreement shall be filed exclusively in the state or federal courts located in the state where the defendant party maintains its principal headquarters in the United States.

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TO 919142494261

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11. Amendment. This MOU shall not be released, discharged, amended or modified in any manner, except by an instrument in writing signed by duly authorized representatives of both parties.


VISA INTERNATIONAL SERVICE
ASSOCIATION

By: 

Name: _____

Title: _____

MASTERCARD INTERNATIONAL
INCORPORATED

By: 

Name: _____

Title: _____



VISA USA INC. P.O. Box 8999 San Francisco, CA 94128

Facsimile Cover Sheet

CONFIDENTIALITY NOTICE:

THIS FACSIMILE TRANSMISSION MAY CONTAIN CONFIDENTIAL INFORMATION BELONGING TO THE SENDER WHICH IS PROTECTED BY THE ATTORNEY-CLIENT AND/OR WORK PRODUCT PRIVILEGE. THE INFORMATION IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED BELOW. IF YOU ARE NOT THE INTENDED RECIPIENT, YOU ARE NOTIFIED THAT ANY DISCLOSURE, COUNTERFEITING, DISTRIBUTION, OR THE TAKING OF ANY ACTION IN RELIANCE ON THE CONTENTS OF THIS INFORMATION, IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS TRANSMISSION IN ERROR, PLEASE IMMEDIATELY NOTIFY THE SENDER BY TELEPHONE TO ARRANGE FOR RETURN OF THE DOCUMENTS.

FROM

To: Colm Dobbyn

Company: MasterCard International, Inc.

Phone: 212-649-4707

Fax: 212-649-4715

TO

From: Andrew Konstantaras

Company: Visa

Phone: 415-432-8066

Fax: 415-432-2145

Date: 1/23/96

Pages

to follow: 3

URGENT - PLEASE DELIVER IMMEDIATELY

Colm,

At the request of Bennett Katz, please sign and return this document to Visa by 2:30pm PST, to the above fax number.

Thank you.

Colm J. Dobbyn
914 249-4707

MasterCard
International



TO: John Gould
John Wainwright